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~~FOR [illegible] brief~~ despatch [illegible] of Feb. 17.

mjf

It might be pertinent and helpful for the Dept. to give some explanation of two of the authorizations contained in the [illegible] of Feb. 20; namely, those numbered 2 and 4.

(2) Considerations underlying the authorization for a protocol exception included the following. First, the rule represented by the second sentence of Article VIII(2), being a fairly recent innovation in the "standard" draft, has not yet appeared in any signed treaty. Thus its inclusion in the Japanese treaty, even with some qualification, would represent a net advance in treaty making. Second, the proposed qualification does not in its text appear inequitable, or to be very significant. It is capable of being characterized as merely an adjustment to the American federal system inspired by formulae already found in other U.S. treaties in connection with real property and the rights of corporations, and as chargeable to Japanese hypersensitivity about reciprocity. Hence it is not regarded as constituting an embarrassing precedent [illegible] other [illegible] objections. Third, but not least, the Japanese say they are willing to go along as to banking, the interest about which there is genuine actual concern. The DEPT is particularly relieved to see the banking question satisfactorily settled.

American investment seeking authorization to enter the fields reserved in the first sentence of Article VII(2) would presumably [illegible] with their eyes open, so to speak, and after careful investigation. If there were any fear that their investment might be disturbed by Japanese

invocation

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invocation of the proposed protocol reservation, they could protect themselves by advance agreement with the Japanese authorities. IaPT is inclined to agree with Embassy that the proposed qualification has little real merit; but has nevertheless felt disposed to agree to it out of a desire to accommodate the Japanese on a matter to which they appear to attach importance, and on the theory that actually the proposed qualification is relatively innocuous.

(4) The second paragraph of Article XVIII is drafted about as moderately as the Department knows how consistently with providing a useful and practicable rule. Attempts in the course of previous negotiations to introduce further modifications without gravely impairing its worth have proved taxing and fruitless. While prudent and acceptable modification by way of necessary compromise might be within the realm of possibility, it is not believed that the effort invested in such an endeavor at the risk of substantially protracting the negotiation would likely be profitable.

The provision in question was dropped from the Colombia Treaty, without arousing criticism. Hence there would be a good precedent for dropping it from the Japanese treaty if that course appears expedient.

General. The Department has approached remaining issues in the presumption that the stage has now probably arrived when an endeavor should be made to complete the negotiation at an early date; and that it would be desirable for the negotiation to conclude in a note of great harmony and in an atmosphere of U.S. "understanding of Japanese problems", to the end of maximizing the treaty's favorable receptivity by the Japanese public. Now that the Japanese, after extensive and detailed discussions, have become persuaded of the soundness and acceptability of the treaty and its provisions as a whole and, after Cabinet consideration, are left with a minimum of real qualms about a few specific points, it appears expedient to try finally to accommodate them to the extent feasible, and so long as this can be done

without

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without substantially impairing the treaty as a whole or compromising fundamental principle. With the adjustments authorized, the treaty remains a very good treaty, ranking among the best yet concluded by the U.S. and in some particulars even better than outstanding treaties with other countries.

The Department has been informally advised that the Senate Foreign Relations Committee is considering plans to resume shortly its study of the six treaties on which hearings were held late last session and which were carried over in consequence of the unresolved controversy that arose over practice of the professions. If the Japanese treaty were signed and received in time to be included with the hold-over treaties, ratification would become possible this year, barring accident. If not, it would probably be carried over to next session, as it is understood that the Committee practice is to function only once during a session on a given type of treaty.

DULLES

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